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Los Angeles Superior Court

FEB 02 2007
John A. Clarke, Executive Officer/Clerk
y _____, Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BS107298

SES TERMINAL, LLC, a Delaware limited liability company;

Petitioner,

v.

THE PORT OF LONG BEACH; BOARD OF
HARBOR COMMISSIONERS OF THE CITY
OF LONG BEACH; CITY OF LONG BEACH;
and Does 1 through 50,

Respondents.

CASE NO.

**VERIFIED PETITION FOR WRIT OF
MANDATE**

Petitioner SES Terminal, LLC ("SES") respectfully petitions this Court for a writ of mandate pursuant to California Code of Civil Procedure section 1085 and Public Resources Code section 21168.5, and alleges as follows:

INTRODUCTION

1. After several years of collaborating with the City of Long Beach (the "City"), the Port of Long Beach (the "POLB") and the federal government to establish a liquefied natural gas

1 ("LNG") terminal in the Port of Long Beach, the Board of Harbor Commissioners of the City of
2 Long Beach (the "Board") violated the California Environmental Quality Act ("CEQA"), Public
3 Resources Code ("PRC") §§ 21000 *et seq.*, by refusing to prepare and certify a final Environmental
4 Impact Report ("EIR") for the LNG Project.

5 2. Since 2001, and later pursuant to written agreements with the City and POLB,
6 SES has invested more than \$80 million and other significant resources to obtain all public
7 approvals required to construct an LNG receiving and vehicle fuel distribution facility in the Port of
8 Long Beach ("LNG Project"). Construction costs for the LNG Project are expected to exceed \$800
9 million. Consistent with all applicable federal and state laws, including all environmental and
10 safety regulations, the LNG Project would receive LNG on transport ships, off load the commodity
11 and store same in two (2) large onshore tanks, regasify the majority of the LNG into natural gas for
12 distribution through the region's existing pipeline system, and distribute the remaining LNG for use
13 as vehicle fuel. More than forty (40) facilities similar to the LNG Project dot the globe, with five
14 (5) such facilities in Tokyo Bay, and five in the United States, including one in Boston Harbor that
15 has been in continuous operation for more than thirty years.

16 3. Following a change of political leadership in the City of Long Beach, and despite
17 POLB's authorized, prior representations and promises to SES, the millions of dollars devoted by
18 SES and the importance of the LNG project to the public, the Board has unlawfully halted the
19 environmental review process. Petitioner seeks a Writ of Mandate requiring that POLB complete
20 and certify a final EIR.

21 4. As another improper justification for declining to complete the final EIR, the
22 Board claims that CEQA requires full disclosure of the EIR to the public. However, the Federal
23 Energy Regulatory Commission ("FERC") and the United States Coast Guard (both federal
24 agencies) cannot allow certain sensitive security and energy related information to be reviewed by
25 the public pursuant to national security laws. Because the federal government will not allow public
26 release of material that is purportedly mandated by CEQA, the Board concluded that POLB could
27 never prepare an adequate EIR. The Board's position is untenable and does not provide a valid
28 reason to stop preparation of the final EIR. CEQA's public disclosure requirement can be satisfied

1 without releasing sensitive security information to the public. Moreover, the Board cannot hide
2 behind the alleged FERC/CEQA conflict as a pretext for project disapproval because federal law
3 preempts CEQA in this context.

4 5. In October 2005, FERC and POLB issued and circulated the joint Draft
5 Environmental Impact Statement/Environmental Impact Report ("DEIS/EIR") for the LNG Project.
6 The DEIS/EIR represented the cumulative efforts of FERC and POLB to fully assess
7 environmental, safety and security impacts of the LNG Project. After receiving public comments
8 on the DEIS/EIR, FERC and POLB nearly completed a joint Final Environmental Impact
9 Statement/Environmental Impact Report ("FEIS/EIR"). Nevertheless, without consulting SES or
10 providing any opportunity for public discussion or comment, the Board unilaterally, arbitrarily and
11 unlawfully abandoned all efforts to finalize the FEIS/EIR on January 22, 2007 during a closed
12 session meeting. The Board confirmed its abandonment of the LNG Project in a one-sentence press
13 release of the same date, thus attempting to nullify more than four years of work and more than \$80
14 million of costs incurred by SES.

15 6. CEQA mandates that POLB, as the lead agency, prepare an EIR for the LNG
16 Project. The parties' agreement concerning the LNG Project likewise requires POLB to complete
17 the FEIS/EIR. SES brings this petition for peremptory writ of mandate to command the Board to
18 set aside its unlawful decision and to compel the Board and POLB to comply with its legal duty
19 under CEQA.

20 **THE PARTIES**

21 7. Petitioner SES is a Delaware limited liability company. At all relevant times,
22 SES was and has been duly authorized to and has in fact conducted business in the State of
23 California, County of Los Angeles. SES is the successor-in-interest to Sound Energy Solutions.
24 All references to "SES" in this Verified Petition for Writ of Mandate ("Petition") shall include
25 Sound Energy Solutions.

26 8. Respondent POLB is an agency within the City of Long Beach and is operated
27 and managed by the City of Long Beach Harbor Department.

28 9. Respondent Board is responsible for setting policy for POLB and managing the

1 Harbor Department.

2 10. Respondent City is a California Charter City located in the County of Los
3 Angeles, California. Collectively, POLB, the Board and the City shall be referred to herein as
4 "Respondents."

5 11. The identities and capacities of respondents named herein as Does 1 through 50,
6 inclusive, are unknown to SES, who therefore sues said respondents as Does 1 through 50,
7 inclusive. SES will seek to amend this Petition when the identities and capacities of such
8 respondents become known to it.

9 **GENERAL ALLEGATIONS**

10 **The Regulatory Framework**

11 12. The complex web of permits, licenses and leases required to site, construct and
12 operate an LNG project include federal, state, and local approvals as well as local agreements for
13 the use of the land associated with proposed projects. The federal approvals must be obtained from
14 federal agencies and those state agencies that have been delegated authority under color of federal
15 law. The key federal agency approval must come from FERC under Section 3 of the Natural Gas
16 Act ("NGA") for approval to site, construct and operate the LNG facility. There are other required
17 federal agency approvals, including the United States Coast Guard, the Army Corps of Engineers,
18 the Department of Transportation and the Department of Energy, and others.

19 13. State agencies have permitting and approval rights under both federal and state
20 law. State agencies with permitting and approval rights under color of federal law are the California
21 Coastal Commission ("CCC") under the federal Coastal Zone Management Act (CZMA), the South
22 Coast Air Quality Management District ("SCAQMD") under the federal Clean Air Act ("CAA"),
23 and the Los Angeles Regional Water Quality Control Board under the Federal Water Pollution
24 Control Act or Clean Water Act ("CWA").

25 14. Other state and local agencies also claim permitting and approval rights. For
26 example, for SES' proposed LNG Project at the Port of Long Beach, POLB requires a Harbor
27 Development Permit, the City of Los Angeles requires a franchise agreement for those portions of
28 the pipeline coming from the LNG Project that cross onto City of Los Angeles' land, and the Long

1 Beach Building Department requires construction permits. Other state and local governmental
2 entities have similar additional requirements.

3 15. Until recently, the complex web of federal, state and local permitting
4 requirements had brought to a virtual standstill the siting, construction and operation of new LNG
5 Projects necessary for the nation's future energy supply. In 2005, Congress stepped in to break the
6 logjam. The Energy Policy Act of 2005 amended the NGA to include an express preemption clause
7 providing FERC with the "exclusive authority to approve or deny an application for the siting,
8 construction, expansion or operation of an LNG terminal." This provision expressly preempts state
9 law and is intended to provide FERC with exclusive authority for siting, construction, expansion
10 and operation of LNG terminals under federal law as well.

11 16. There is only one exception to the Energy Policy Act of 2005's preemption of
12 state law. The Energy Policy Act of 2005 expressly left in place existing state permitting
13 requirements under color of three federal environmental laws: the CAA, CWA and CZMA. That
14 limited exception, however, does not apply to any other state or local permitting requirements,
15 including any permitting requirements of POLB and the City.

16 **The EIS/EIR Requirements under NEPA and CEQA**

17 17. Under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321, *et*
18 *seq.*, federal agencies considering permits for non-exempt projects must prepare an Environmental
19 Impact Statement ("EIS") to consider effects on the environment. The Energy Policy Act of 2005
20 designates FERC the lead agency for preparation of an EIS for LNG projects. Other federal
21 agencies with statutory review procedures for LNG projects accordingly must enter into cooperation
22 agreements with FERC in connection with the preparation of the required EIS.

23 18. Under CEQA, before public agencies can issue permits that may have a
24 significant effect on the environment, an EIR must be prepared. CEQA requires the lead agency to
25 prepare an EIR for non-exempt projects. An adequate EIR is a prerequisite for a host of state and
26 local permits. Thus, when the lead state agency prepares an EIR, it does so not only for its own
27 permitting requirements, but for the requirements of other state and local agencies as well.

28 19. Preparation of an EIS under NEPA and an EIR under CEQA is triggered by an

1 application for an LNG project submitted to federal, state and local agencies with jurisdiction over
2 the project. Except when a project is rejected at its initial stages, it is the statutory obligation of the
3 CEQA lead agency to prepare a final, adequate EIR for any proposed non-exempt project. Although
4 both NEPA and CEQA encourage cooperation between federal, state and local agencies to the point
5 of preparing joint EIS/EIRs, joint preparation is not required. Thus, if, for example, the CEQA lead
6 agency is concerned about the adequacy of an EIS prepared by a federal agency, the CEQA lead
7 agency has the statutory obligation to prepare and issue its own EIR.

8 **The Agreement Between SES and POLB Regarding the Proposed LNG Project**

9 20. In 2001, SES began work to site and construct a LNG receiving and
10 regasification facility at one of the ports in southern California. Because LNG is cleanly, safely
11 and efficiently converted to much needed fuel, SES' facility was sought out by several ports. SES'
12 initial investigation focused on the Port of Los Angeles. SES developed conceptual drawings and
13 preliminary engineering data for the LNG facility. In fact, a community advisory panel to the Port
14 of Los Angeles recommended the LNG Project for the Port of Los Angeles. However, in late 2002
15 through and including early 2003, POLB representatives approached SES and made promises and
16 representations which led SES to site the facility in Long Beach. In fact, Long Beach officials
17 issued a Request for Proposal ("RFP") at the time it was courting SES to locate at the Long Beach
18 Port. The RFP called for an approximately twenty-five (25) acre site then commonly known as Pier
19 Echo and reserved for liquid bulk petroleum uses. "Pier Echo" comprises the eastern portion of Pier
20 T at POLB, and was formerly used by the United States Navy. The site has been largely vacant
21 since the Naval facility closed in or about 1990. The specific area for the LNG Project is commonly
22 known as T-126. SES responded to the RFP, and was selected.

23 21. By early 2003, SES and the City had made substantial progress in negotiations
24 regarding construction and operation of the LNG facility in the POLB, and agreed upon the material
25 terms of SES' lease of Pier Echo for that purpose.

26 22. As a result, on May 8, 2003, SES and POLB entered into an agreement
27 memorializing the mutual understanding of SES and POLB regarding SES' construction of the
28 LNG Project in the Port of Long Beach ("Agreement"). A true and correct copy of the Agreement

1 is attached as Exhibit "A". POLB entered into the Agreement with the unanimous consent of the
2 Board.

3 23. The Agreement confirms that POLB and SES "have reached agreement on the
4 general business terms" of SES' lease – referred to in the Agreement as a "preferential assignment"
5 – of the eastern portion of Pier T in the Port of Long Beach (the "Project Site"). Agreement, Exh.
6 "A", p. 1. Those terms are set forth in substantial detail in the Summary of Terms appended to the
7 Agreement. The Agreement further confirms that SES and POLB will negotiate a final lease
8 consistent with Summary of Terms "as such time as it is appropriate to do so." Agreement, Exh.
9 "A", p. 1. Unless and until SES obtained the necessary permits and approvals to construct and
10 operate the LNG Project, the appropriate time would never arise.

11 24. The Agreement further provides SES with the exclusive right to pursue
12 development of a LNG receiving terminal in the POLB until: (i) SES determines the LNG Project is
13 not feasible, (ii) FERC declines to issue necessary permits or approvals for the LNG Project, or (iii)
14 thirty-seven (37) months expire, whichever occurs first (the "Exclusivity Period"). Agreement, Exh.
15 "A", p. 1. In consideration for this Exclusivity Period, SES agreed to pay POLB compensation in
16 equal monthly installments at the rate of \$17,425 per acre per year.

17 25. The LNG Project continues to be feasible and FERC has continued to process
18 necessary permits and approvals. The Exclusivity Period continued in effect for thirty-seven (37)
19 months and expired thereafter. Although the Exclusivity Period under the Agreement expired, the
20 POLB and Board have actively and consistently, until January 22, 2007, continued to process and to
21 act upon all items related to SES' application. All terms of the Agreement, other than the
22 Exclusivity Period, remain in full force and effect. As required under the Agreement, SES paid to
23 POLB approximately \$1.3 million in consideration of the Exclusivity Period, as well as over \$20
24 million for preparation of the DEIS/EIR.

25 26. Separate and apart from the Exclusivity Period, POLB agreed "to cooperate with
26 SES, at no cost to POLB other than reasonable staff time, in connection with the feasibility studies
27 and application processes for the Project." Agreement, Exh. "A", p. 2. POLB's obligation to
28 cooperate with SES in connection with the permit and approval processes for the LNG Project

1 continues in full force and effect. As explained herein, POLB violated that condition of the
2 Agreement on January 22, 2007 and continues to do so through the filing of this Verified Petition.

3 27. The Agreement additionally states that "[f]inalization of the preferential
4 assignment agreement will involve SES and the Energy Department of the City of Long Beach
5 entering into an arrangement for the benefit of" the City of Long Beach and its residents.
6 Agreement, Exh. "A", p. 2. Specifically, in connection with finalizing SES' lease of the LNG
7 Project Site, SES and the City would concurrently enter into an LNG supply agreement. Neither the
8 lease nor the supply agreement could be finalized until after SES obtained all necessary permits and
9 approvals for the construction and operation of the LNG Project.

10 28. In furtherance of the Agreement's contemplation of a supply agreement between
11 SES and the City, SES entered into a Memorandum of Understanding ("MOU") with the City, as
12 owner of Long Beach Energy (the City's proprietary energy utility, now named Long Beach Gas &
13 Oil ("LBGO")), memorializing the intent of the parties to conduct confidential, non-binding
14 discussions regarding the long-term purchase of natural gas, LNG and/or related services. A true
15 and correct copy of the May 29, 2003 MOU is attached as Exhibit "B". The MOU contains no date
16 by which the negotiations between SES and the City's energy utility must be completed.

17 29. Due to the proprietary nature of the contemplated discussions, the MOU prevents
18 either SES or the City from issuing any press release or statement to the press or public media
19 regarding discussions contemplated under the MOU without prior consultation and written consent
20 of the non-issuing party. MOU, Exh. "B", ¶7. The City has repeatedly violated that provision of
21 the MOU.

22 **SES' Applications to Construct and Operate the LNG Project at the Port of Long Beach**

23 30. Shortly after entering into the Agreement and the MOU, representatives of SES
24 and POLB traveled to Washington, D.C. in or around June 2003 to meet with officials from FERC
25 regarding SES' construction of the LNG Project in the Port of Long Beach. FERC agreed to work
26 cooperatively with SES, the City, and POLB and to prepare the necessary documents in order to
27 obtain required permits and approvals. Among other things, FERC and POLB agreed to prepare a
28 Joint EIS/EIR, with FERC serving as the federal lead agency for purposes of NEPA and POLB

1 serving as lead agency for purposes of CEQA.

2 31. With the Agreement and MOU in place, as well as a full understanding of
3 FERC's requirements, SES worked diligently to complete its application for the LNG Project to
4 both FERC and POLB. In accordance with Section 3 of the federal NGA and Title 18, section
5 380.12 of the Code of Federal Regulations, the application for an onshore LNG receiving terminal
6 entails completion of thirteen (13) Resource Reports providing information about every aspect of
7 the project, including but not limited to seismic studies, various safety analyses, analysis of the
8 cultural effects of the project, shipping and maritime analyses, and complete engineering drawings
9 of the entire facility and associated pipelines. POLB agreed that SES' FERC application and the
10 completion of various POLB forms would constitute SES' application for a POLB Harbor
11 Development Permit ("HDP"). SES enlisted a multi-faceted team of engineering, safety,
12 environmental, seismic and geotechnical, maritime, and legal experts to assist in the preparation of
13 the application. Completion of the application took SES approximately seven (7) months at an
14 approximate cost of \$8 million.

15 **POLB's Agreement with FERC to Prepare a Joint EIS/EIR**

16 32. In general, the Resource Report and application process serves as the applicant's
17 vehicle to present information to the lead and permitting agencies necessary to study all required
18 aspects of an onshore LNG receiving terminal project, which then leads to, among other permitting
19 and regulatory matters, the EIS/EIR. The applicant pays for the application and Resource Reports,
20 and pays the lead agencies for their independent consultant(s) to complete the EIS/EIR. Once the
21 applicant provides the required information, the lead agencies (here POLB and FERC) assume
22 complete control over the environmental review process so as to independently verify the
23 information furnished by the applicant, independently obtain information not provided by the
24 applicant (or request additional information from the applicant), and process and produce the
25 EIS/EIR and other necessary reports and findings. In this instance, FERC and POLB agreed to
26 share a third party contractor, or consulting firm, to prepare the EIS/EIR for the LNG Project. In
27 addition, POLB hired additional independent consultants to analyze safety, security, and other
28 aspects of the LNG Project.

1 33. Upon return from Washington D.C., SES submitted a request to FERC to initiate
2 FERC's Pre-Filing Process, a process designed to expedite the handling of an application for the
3 construction and operation of a LNG facility. FERC's Pre-Filing Process allows potential LNG
4 project applicants to meet with the Office of Energy Products to explain the proposal and provide
5 drafts of the resource reports before a formal application is filed with FERC. Among other things,
6 an applicant is subject to data requests concerning the conceptual designs, environmental, safety and
7 other concerns. As part of the Pre-Filing Process, FERC notifies interested stakeholders, potentially
8 affected landowners, public interest groups, governmental entities and others, and obtains their
9 input regarding the project. FERC granted SES' request on July 11, 2003.

10 34. On July 25, 2003, SES submitted an application to POLB for a HDP seeking
11 authorization to construct the LNG Project. SES and POLB had previously agreed that SES'
12 completed Resource Reports would also constitute a substantial part of the HDP application. SES
13 has also supplemented its HDP application at various times since July 2003.

14 35. POLB, as the CEQA lead agency for the LNG Project, was and is responsible for
15 conducting the environmental review required under CEQA. This obligation includes the duty to
16 prepare and certify an EIR, which in turn is to be utilized by other state and local agencies in their
17 review and consideration of various other permits required for the LNG Project. A Final EIR for
18 the LNG Project was never completed or certified by POLB.

19 36. After receipt of SES' HDP application, POLB agreed to conduct its CEQA
20 review obligations in conjunction with FERC's Pre-Filing Process. Accordingly, FERC and POLB
21 worked with SES to jointly develop a public outreach plan.

22 **The DEIS/EIR**

23 37. On September 22, 2003, FERC and POLB jointly issued a *Notice of Intent to*
24 *Prepare a Joint Environmental Impact Statement and Notice of Preparation of a Joint*
25 *Environmental Impact Report, Application Summary Report for SES' Proposed Long Beach LNG*
26 *Import Project, Request for Comments on Environmental Issues, and Notice of Public Scoping*
27 *Meeting ("NOI/NOP")*. A true and correct copy of the NOI/NOP is attached as Exhibit "C". FERC
28 and POLB conducted the joint NEPA/CEQA public scoping meeting on October 9, 2003.

1 Following the scoping meeting, POLB issued a supplemental NOP on November 10, 2003 and
2 sought additional public comments by December 12, 2003. A true and correct copy of the
3 supplemental NOP is attached as Exhibit "D". On November 3, 2004, POLB issued a second
4 supplemental NOP and sought public comment by December 6, 2004. A true and correct copy of
5 the second supplemental NOP is attached as Exhibit "E".

6 38. SES filed an application with FERC under Section 3 of the NGA on January 26,
7 2004 seeking federal authorization for the LNG Project. In connection with this application, SES
8 complied with the requirements of 18 C.F.R. § 380.12, including the submission of the Resource
9 Reports prepared specifically for the LNG Project. SES supported these reports with numerous
10 extensive and costly environmental, safety, and other studies and assessments.

11 39. SES has uniformly responded substantively and completely to all information
12 requests, and has never refused to provide information requested by FERC and/or POLB. SES
13 provided POLB with a complete and identical set of Resource Reports as provided to FERC, and it
14 also provided FERC and POLB with identical supplemental information, as requested periodically
15 by FERC and POLB. SES' Resource Reports and supplements, as requested by POLB and FERC,
16 encompass more than forty-nine (49) volumes of material and take up approximately twenty (20)
17 linear feet of space lined beginning to end, and are available to the public via the FERC website,
18 www.ferc.gov.

19 40. Of the many public comment letters received regarding the scoping and
20 substance of the DEIS/EIR, some raised concerns about safety and security risks. These
21 commenters posited that the LNG Project could present a significant safety and security risk to the
22 Port area and, to a lesser extent, Long Beach, because the facility would handle relatively large
23 amounts of natural gas. In response, POLB chose to retain its own private safety and security
24 consultant, and various other consultants, to study the LNG Project in an effort to independently
25 verify the studies provided by SES as well as by the experts retained by FERC.

26 41. As of August 2005, the Long Beach City Council took two additional actions
27 confirming its intent to complete the EIR process and to continue pursuing the LNG Project. First,
28 on June 7, 2005, the City Council voted to continue negotiations with SES for the purchase of

1 natural gas under the MOU and to have the City conduct its own risk and hazard assessments. A
2 true and correct copy of the minutes of the June 7, 2005 meeting of the Long Beach City Council is
3 attached as Exhibit "F".

4 42. Second, on August 23, 2005, the City Council rejected a recommendation
5 proposed by certain opponents of the LNG Project "to request the City Manager to communicate to
6 all pertinent parties" the Council's "stated preference that the LNG facility not be located in the Port
7 of Long Beach." Instead, by a majority vote, the City Council voted to reserve the right to take a
8 position on the siting of an LNG terminal in the Port of Long Beach "until completion of the
9 Environmental Impact Report." A true and correct copy of the minutes of the August 23, 2005
10 meeting of the Long Beach City Council is attached as Exhibit "G".

11 43. In October 2005, FERC and POLB disseminated for public comment the two
12 volume joint Draft Environmental Impact Statement/Environmental Impact Report ("DEIS/EIR")
13 for the Long Beach LNG Import Project. Pursuant to Section 15084(d) of the State CEQA
14 Guidelines, 14 Cal. Code of Regs. §§ 15000 *et seq.*, POLB's dissemination of the DEIS/EIR for
15 public review reflected POLB's independent judgment concerning the adequacy and objectivity of
16 the DEIS/EIR under CEQA.

17 44. Since May 2003, SES has incurred substantial expense in conducting all
18 necessary and required feasibility studies, environmental studies, engineering studies and designs,
19 hazard assessments and other studies and investigations in connection with the LNG Project upon
20 which the DEIS/EIR relies.

21 45. Further, while POLB incurred staff costs and retained its own independent
22 consultants to support its efforts in preparing the DEIS/EIR, SES was required to pay for POLB's
23 costs in preparing the DEIS/EIR. SES has also incurred substantial costs in working with FERC
24 and POLB on the preparation of a DEIS/EIR, including, without limitation, reimbursing or
25 otherwise paying for POLB's direct, out-of-pocket costs. Moreover, SES funded studies and other
26 analyses performed or prepared by federal and state agencies, including, for example, a Waterway
27 Suitability Assessment prepared by the United States Coast Guard.

28 46. As designed, the LNG Project would provide up to 1 billion standard cubic feet

1 per day of natural gas to southern California, 150,000 gallons per day of LNG vehicle fuel, and
2 provide storage for up to 320,000 cubic meters of imported LNG to reduce fluctuations in the local
3 supply of natural gas and to render the region less dependent on domestic pipeline natural gas,
4 amounts of which are diminishing over time.

5 47. Among other things, and following POLB's receipt and incorporation of
6 information from its independent experts (information which has never been shared with SES), the
7 DEIS/EIR independently concluded the LNG Project will not result in a significant impact on
8 public safety. After thorough analysis of numerous risk scenarios, the DEIS/EIR declared the risk
9 to the public from accidental releases to be negligible. The DEIS/EIR likewise concluded, based
10 upon the safety and security measures to be implemented by SES, that the LNG Project does not
11 pose a substantial risk to public safety for intentional acts such as terrorism. To address the limited
12 safety and security concerns, the DEIS/EIR identifies several mitigation measures to be
13 implemented by SES. Prior to January 22, 2007, POLB never informed SES that the DEIS/EIR was
14 deficient or inadequate in any way, or that the Final EIS/EIR would be deficient or inadequate in
15 any way.

16 **Finalization of the EIS/EIR**

17 48. Public comments on the DEIS/EIR were due on or before December 8, 2005.
18 FERC and POLB jointly held a public comment meeting for all interested parties on November 14,
19 2005 in the City Council Chambers of the City of Long Beach. A true and correct copy of the
20 notice of this meeting is attached as Exhibit "H". In addition, POLB held three (3) additional public
21 comment meetings for interested persons on different dates and at different locations throughout the
22 City of Long Beach.

23 49. FERC and POLB received numerous, though largely repetitive, public comments
24 concerning the DEIS/EIR. SES has worked exhaustively with FERC and POLB since the close of
25 the public comment period to evaluate and prepare responses to the comments received, and
26 incorporate those comments as necessary into the FEIS/EIR. SES alleges on information and belief
27 that, as a result of the collaborative efforts of SES, FERC and POLB, the FEIS/EIR is virtually
28 completed.

1 50. In addition to its work on the DEIS/EIR, SES continued to meet with officials
2 from the City, the public, various elected and appointed public officials, and other stakeholders to
3 discuss the LNG Project and provide requested information. On several occasions, SES promptly
4 and thoroughly responded to information requests from interested state and local agencies.

5 51. POLB and FERC, together with the assistance of SES (when requested),
6 continued to work to prepare the FEIS/EIR throughout the summer of 2006. On June 5, 2006, the
7 Board considered the LNG Project in a closed session meeting. Following the closed session
8 meeting, the Board resumed the meeting in open session, where a Principal Deputy City Attorney
9 summarized the closed session discussions. It was reported that the Board intended to await the
10 completion of the EIS/EIR and the conclusion of the negotiations between SES and the City before
11 taking further action on the LNG Project. A true and correct copy of the June 5, 2006 meeting
12 minutes is attached as Exhibit "I".

13 52. SES alleges on information and belief that completion of the FEIS/EIR was
14 scheduled for late September 2006. SES further alleges on information and belief that the tentative
15 completion date was extended to the end of November 2006 to accommodate additional information
16 from FERC.

17 **The POLB's Unlawful Refusal to Complete the FEIS/EIR**

18 53. On December 4, 2006, James C. Hankla, President of the Board, wrote to Bob
19 Foster, the Mayor of Long Beach, and the Long Beach City Council regarding the proposed LNG
20 Project. A true and correct copy of the December 4, 2006 letter is attached as Exhibit "J". Among
21 other things, Mr. Hankla confirmed that POLB has spent significant time analyzing public
22 comments to the DEIS/EIR, modifying its text, and preparing responses to the comments. Without
23 any forewarning to SES, Mr. Hankla stated that unless the Mayor and the City Council
24 acknowledge their support for the LNG Project, POLB will not divert additional staff to the task of
25 completing the FEIS/EIR.

26 54. The Board's December 4, 2006 letter set in motion the final series of apparently
27 choreographed and pre-planned events that led to the improper and unlawful abandonment and so-
28 called "disapproval" of the LNG Project.

1 55. In response to Mr. Hankla's December 4, 2006 letter, Mayor Foster wrote to SES
2 on December 7, 2006 declaring "I will not support a Sound Energy Solutions LNG facility proposal
3 at the Port of Long Beach." Mayor Foster limited his stated opposition to alleged safety and
4 security concerns he believed the LNG Project would pose to the City and its residents. A true and
5 correct copy of the December 7, 2006 letter is attached as Exhibit "K".

6 56. On December 12, 2006, Christopher J. Garner, Director of the City of Long
7 Beach Gas & Oil Department ("LBGO") sent a memorandum to the Long Beach City Manager,
8 Gerald R. Miller, in which Mr. Garner opines that "it is not realistic to expect that further
9 discussions with SES would provide any substantial additional value to what has been offered to
10 date by SES" and that "the value offered by SES is not nearly sufficient to recommend to the City
11 Council that negotiations continue forward." A true and correct copy of the December 12, 2006
12 memorandum is attached as Exhibit "L".

13 57. Later, in a legal memorandum dated January 8, 2007 (the "City Attorney
14 Memo"), made public by POLB in a press release, Long Beach City Attorney Robert Shannon
15 advised that "should the Board, in its discretion choose to abandon the project, that decision would
16 be neither premature nor inappropriate."

17 58. On January 22, 2007, during a closed door meeting, the Board surreptitiously
18 voted to "disapprove" the LNG Project prior to the completion of the FEIS/EIR. The agenda for
19 this meeting omitted any mention of the Board's intent to consider the continued viability of the
20 LNG Project or the Board's intent to "disapprove" the Project. Nor did the Board purport to place
21 on the agenda for consideration any of the applications filed by SES for the LNG Project. A true
22 and correct copy of the agenda for the January 22, 2007 meeting is attached as Exhibit "N".

23 59. The Board published its purported disapproval of the LNG Project in the
24 following one-sentence press release issued on January 22, 2007:

25 **Statement on LNG**

26 After deliberation, based upon the attached opinion from the City
27 Attorney which concludes that the Environmental Impact Report on
28 the proposed LNG project "is and in all likelihood will remain legally
inadequate," and since an agreement between Sound Energy Solutions
and the City does not appear to be forthcoming, the Board of Harbor

Commissioners disapproves the project and declines to pursue further negotiations.

A true and correct copy of this Statement on LNG ("Press Release"), including the appended City Attorney Memo, is attached as Exhibit "M".

60. The minutes of the January 22, 2007 meeting of the Board, subsequently mimicked in the Press Release, confirm the basis for the Board's action:

[B]ased upon the attached opinion from the City Attorney, which concludes that the Environmental Impact Report on the proposed LNG project, 'is and in all likelihood will remain legally inadequate,' and since an agreement between Sound Energy Solutions and the City does not appear to be forthcoming, the Board of Harbor Commissioners, unanimously disapproves the project and declines to pursue further negotiations.

The minutes of the January 22, 2007 meeting of the Board are attached as Exhibit "O".

61. The Board's action, and City Attorney Memo upon which it is purportedly based at least in part, relies upon a fundamentally flawed understanding of the requirements of CEQA and POLB's legal duty to prepare a final EIR for the LNG Project. It also expressly contradicts POLB's findings in the DEIS/EIR.

62. The City Attorney Memo also makes several erroneous and unsupported representations about the status of the FEIS/EIR, the purported failure of FERC to disclose necessary information to POLB, and the implications of that alleged failure. POLB, as the lead agency under CEQA, has a mandatory duty to complete an adequate EIR. The City Attorney's recommendation to abandon the EIS/EIR ignores POLB's mandatory CEQA duties. The City Attorney Memo also contradicts the express findings of the DEIS/EIR.

63. The Board's action also relies upon a mischaracterization of the obligations of SES and the City regarding the LNG supply agreement – the agreement between Sound Energy Solutions and the City referenced in the Press Release and meeting minutes. As contemplated under the Agreement and the MOU, the LNG supply agreement between the City and SES could not be forthcoming until *after* POLB completed an EIR and entered into a lease with SES.

64. Despite his December 12, 2006 memorandum, Mr. Garner of LBGO continued to negotiate the terms of the supply agreement and personally met with representatives of SES on

1 January 19, 2007. In fact, Mr. Garner summarized these on-going negotiations in an electronic mail
2 message ("email") sent to SES at 1:41 p.m. on Monday, January 22, 2007 – the day of the Board's
3 decision to abandon the LNG Project. At 4:23 p.m. on the same day (less than three hours later),
4 LBGO sent an email to SES abruptly terminating negotiations on the grounds that continued
5 discussions were moot in light of the Board's decision to "disapprove" the LNG Project. As these
6 communications demonstrate, the Board's conclusion that an agreement between LBGO and SES
7 "does not appear to be forthcoming" was premature, unsupported by the facts, and a mere pretext
8 for terminating the EIS/EIR process.

9 65. The Board's purported disapproval of the LNG Project has no basis in the record
10 and by its terms did not purport to deny any application then pending before the POLB.
11 Accordingly, there is no administrative appeal available to SES to remedy the Board's unlawful
12 action.

13 **FIRST CAUSE OF ACTION**

14 **(For Writ of Mandate Against All Respondents for Violation of CEQA)**

15 66. By this reference, SES incorporates that allegations of paragraphs 1 through 65
16 of this Petition as though fully set forth herein.

17 67. In enacting CEQA, the Legislature declared, among other things, that it is the
18 policy of the state to "[c]reate and maintain conditions under which man and nature can exist in
19 productive harmony to fulfill the social and economic requirements of present and future
20 generations," and to "[e]nsure that the long-term protection of the environment, consistent with the
21 provisions of a decent home and suitable living environment for every Californian" PRC §
22 21001. The Legislature further declared that CEQA "is an integral part of any public agency's
23 decision making process" PRC § 21006.

24 68. In order to achieve these and other objectives of CEQA, CEQA and its
25 implementing Guidelines, found in Title 14, California Code of Regulations, §§ 15000 *et seq.*
26 ("Guidelines"), require that an EIR be prepared when a public agency finds substantial evidence that
27 a project may have a significant effect on the environment. Guidelines, §150002(f). "The EIR
28 requirement is the heart of CEQA." Guidelines, §150003(a). An EIR "is an informational

1 document which, when its preparation is required by [CEQA], shall be considered by every public
2 agency prior to its approval or disapproval of a project." CEQA does not require "technical
3 perfection" of an EIR. Guidelines, § 15003(i). Rather, the appropriate standard is a good faith
4 effort at full and adequate disclosure based upon publicly available information. Guidelines, §
5 15151.

6 69. POLB is the lead agency for the LNG Project under CEQA. As the CEQA lead
7 agency, POLB was and is responsible for preparing an EIR for the LNG Project. Other public
8 agencies in California which have discretionary approval authority over the LNG Project (known as
9 "responsible agencies") are required to consider the EIR prepared by POLB prior to granting any
10 permit or approval for the LNG Project.

11 70. Under CEQA, a lead agency has no discretion to refuse to complete an EIR when
12 a project requires one, and a project applicant may seek a writ of mandate compelling the lead
13 agency to complete the process of preparing and certifying an adequate EIR. *Sunset Drive Corp. v.*
14 *City of Redlands*, 73 Cal.App.4th 215, 222 (1999).

15 71. POLB, together with FERC, determined that an EIR and EIS would be required
16 for the LNG Project.

17 72. SES, FERC, and POLB undertook more than three (3) years of coordinated
18 efforts to prepare and circulate for public comment the DEIS/EIR.

19 73. Upon receiving public comments, SES, FERC and POLB engaged in
20 conscientious efforts to consider, respond to, and, where appropriate, incorporate those comments
21 into a FEIS/EIR.

22 74. POLB's action to terminate the LNG project on January 22, 2007 without
23 completing the FEIS/EIR and without substantial justification violated CEQA's mandate that POLB
24 complete an EIR for the LNG Project.

25 75. The Board's decision to "disapprove" the LNG project on January 22, 2007
26 constituted a prejudicial abuse of discretion for which SES is entitled to mandamus relief because
27 the Board did not proceed in the manner required by law and because the decision was not
28 supported by substantial evidence. Among other things:

1 a. The conclusion that the EIR for the LNG Project "is and in all
2 likelihood will remain legally inadequate" is not supported by substantial evidence and nevertheless
3 cannot support the Board's decision because the duty to prepare an adequate EIR lies with POLB;

4 b. Neither FERC nor any other federal agency withheld information that
5 POLB needs to prepare an adequate EIS/EIR;

6 c. Even if FERC or other federal agency had withheld information from
7 POLB or otherwise failed to cooperate with POLB in the preparation of a joint Final EIS/EIR,
8 POLB has, and at all relevant times had, the ability, responsibility and legal duty to issue its own
9 Final EIR separate and apart from the Final EIS;

10 d. The Board's decision was based solely on argument, speculation,
11 unsubstantiated opinion or narrative, and evidence that is clearly erroneous or inaccurate;

12 e. None of SES' pending applications relating to the LNG Project,
13 including but not limited to the HDP application, were properly before the Board on January 22,
14 2007;

15 f. The Board does not have the power to "disapprove" the LNG Project
16 as a whole, but rather may only act upon specific applications that are properly presented to it for
17 decision; and

18 g. The characterization of the Board's action as a "disapproval" of the
19 LNG Project was merely a pretext for its decision to abandon the EIS/EIR process.

20 76. Many of the stated reasons for the Board's conclusion that an adequate Final
21 EIS/EIR cannot be prepared concern matters that have been preempted by federal law. For
22 example, the NGA subjects the business of transporting and selling natural gas to FERC. As
23 another example, the federal government has enacted regulations prohibiting the release of
24 sensitive security information. *See* 49 CFR Part 1520; 49 U.S.C § 40119. Thus, to the extent
25 CEQA requires public disclosure of sensitive security information, it is preempted by federal law.
26 It is impossible to comply with both regulations mandating the protection of sensitive security
27 information and with regulations mandating public disclosure of sensitive security information.

28 77. PRC § 21080(b)(5) provides that CEQA does not apply to projects "which a

1 public agency rejects or disapproves." However, as stated in Section 15270(b) of the Guidelines:
2 "This section is intended to allow an initial screening of projects on the merits for quick
3 disapprovals prior to the initiation of the CEQA process where the agency can determine that the
4 project cannot be approved." In this case, the Board did not find that the LNG Project "cannot be
5 approved," and its decision to "disapprove" the LNG Project was not based on the merits of the
6 Project. Nor did the Board deny any of the pending permits for which an EIR is required. Rather,
7 the Board's decision was tantamount to a decision to abandon the EIS/EIR process, and constitutes
8 an improper refusal to prepare a Final EIR in violation of POLB's mandatory duty under CEQA.
9 Furthermore, the Board's decision occurred long after the CEQA process had been initiated. Indeed,
10 the CEQA process had nearly been completed. For these and other reasons, PRC § 21080(b)(5)
11 does not apply.

12 78. SES has no adequate remedy at law to obtain completion of the EIR or otherwise
13 remedy POLB's blatant violation of its statutory duties under CEQA.

14 79. There are no specific administrative remedies provided by statute or rule.

15 80. Accordingly, SES requests that this Court issue a peremptory writ of mandate to
16 Respondents (i) setting aside the Board's January 22, 2007 action, and (ii) ordering POLB to prepare
17 a Final EIR for the LNG Project in accordance with its mandatory duties under CEQA prior to
18 approving or disapproving the LNG Project.

19 **SECOND CAUSE OF ACTION**

20 **(For Peremptory Writ of Mandate Against Respondents)**

21 81. By this reference, SES incorporates that allegations of paragraphs 1 through 80
22 of this Petition as though fully set forth herein.

23 82. The Board's action on January 22, 2007 to disapprove the LNG Project
24 constitutes a prejudicial abuse of discretion inasmuch as the Board and POLB failed to comply with
25 legal mandates.

26 83. POLB's action to disapprove the LNG project on January 22, 2007 violated SES'
27 right to due process under the United States and California Constitutions and therefore constituted a
28 prejudicial abuse of discretion.

84. The Board's action on January 22, 2007 to disapprove the LNG Project was arbitrary and capricious because, among other things, it was based on political considerations unrelated to the merits of the LNG Project.

85. The Board's action on January 22, 2007 was based, in whole or in part, on grounds that have been pre-empted under the NGA.

86. SES has no adequate remedy at law to obtain completion of the final EIR or otherwise remedy POLB's blatant abuse of discretion.

87. Accordingly, SES requests that this Court issue a peremptory writ of mandate setting aside the Board's decision.

PRAYER

WHEREFORE, SES prays for judgment as follows:

1. For a writ of mandate commanding Respondents to set aside, annul, and vacate the January 22, 2007 decision concerning SES' LNG Project, and to direct POLB to prepare and certify a Final EIR for the LNG Project.

2. For costs of suit herein incurred.

3. For reasonable attorneys' fees and costs.

4. For such other and further relief, decrees and orders as the Court deems just, necessary and/or appropriate and/or according to proof at trial.

DATED: February 7, 2007

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VERIFICATION

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I have read the foregoing **VERIFIED PETITION FOR WRIT OF MANDATE** and know its contents.

CHECK APPLICABLE PARAGRAPH

☐ I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☐ an Officer ☐ a partner, ☒ a Chief Executive Officer of SES Terminal, LLC, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I have read the foregoing document and know its contents. I am informed and believe that the matters stated herein are true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I have read the foregoing document and know its contents. I am informed and believe and on that ground allege that the matters stated in it are true.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on February 7, 2007, at Long Beach, California.



THOMAS E. GILES